

A BILL

To provide for a more competitive electric power industry, and for other purposes.

1 Be it enacted by the Senate and House of Representatives of the United States
2 of America in Congress assembled,

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the "Comprehensive Electricity Competition Act".

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TITLE I. RETAIL ELECTRIC SERVICE

SEC.101. RETAIL COMPETITION

(a) The Public Utility Regulatory Policies Act of 1978 (referred to in this Act as PURPA) is amended by adding after section 608 the following new section:

“SEC. 609. RETAIL COMPETITION.

"(a) Definitions.--For purposes of this section--

"(1) 'distribution utility' means a person, State agency, or any other entity that owns or operates a local distribution facility used for the sale of electric energy to an electric consumer;

"(2) 'nonregulated distribution utility' means a distribution utility not subject to the ratemaking authority of a State regulatory authority; and

"(3) 'retail stranded costs' means the amount of net costs incurred or obligations undertaken before the date of enactment of the Comprehensive

1 Electricity Competition Act by a distribution utility that--

2 "(A) were incurred or undertaken by that distribution utility in order
3 to comply with a legal obligation on that utility to provide electricity to
4 electric consumers in its service territory, and

5 "(B) cannot be recovered because of implementation of retail
6 competition under subsection (b).

7 "(b) Retail Competition Requirement.--Except as provided in subsection (c), not
8 later than January 1, 2003, any distribution utility that has the capability to deliver
9 electric energy to an electric consumer over its facilities shall offer open access to
10 those facilities for the sale of electric energy to the consumer and shall do so at rates,
11 terms, and conditions that are not unduly discriminatory or preferential, as determined
12 by the appropriate regulatory authority.

13 "(c) Opt Out.--(1) A State regulatory authority (with respect to a distribution utility
14 for which it has ratemaking authority) may direct a distribution utility not to implement
15 the retail competition requirement described in subsection (b) if the State regulatory
16 authority finds, after notice and opportunity for hearing, that implementation of the retail
17 competition requirement by the distribution utility will have a negative impact on a
18 class of customers of that utility that cannot be mitigated reasonably.

19 "(2) A nonregulated distribution utility may determine not to implement the retail
20 competition requirement described in subsection (b) if it finds, after notice and
21 opportunity for hearing, that implementation of the retail competition requirement by
22 the distribution utility will have a negative impact on a class of customers of that utility

1 that cannot be mitigated reasonably.

2 "(3) The State regulatory authority (with respect to a distribution utility for which
3 it has ratemaking authority) or nonregulated distribution utility shall publish the
4 determination and its basis and shall file a notice with the Commission of its
5 determination by January 1, 2002.

6 "(d) Notice of Retail Competition.--A State regulatory authority (with respect to a
7 distribution utility for which it has ratemaking authority) or nonregulated distribution
8 utility shall file with the Commission a notice that the distribution utility has
9 implemented or will implement retail competition consistent with subsection (b). The
10 notice shall describe the implementation of retail competition. The notice is effective
11 for purposes of section 118 of this Act and sections 212(h), 216, and 217 of the
12 Federal Power Act on the date the notice is filed or the date of implementation of retail
13 competition consistent with subsection (b), whichever is later.

14 "(e) Consideration of Recovery of Retail Stranded Costs.--If a State regulatory
15 authority conducts a public proceeding before a distribution utility implements retail
16 competition as required under subsection (b), as part of this proceeding, the State
17 regulatory authority shall consider the appropriate mechanism under State law to
18 address recovery by a distribution utility for which it has ratemaking authority of retail
19 stranded costs that are legitimate, prudent, and verifiable, if the utility has taken all
20 reasonable steps to mitigate the costs. A charge imposed for purposes of recovering
21 retail stranded costs should be imposed in a manner so as to minimize to the fullest
22 extent possible any effect on an electric consumer's choice among competing

1 suppliers or products.

2 "(f) Enforcement.--Any person may bring an action in the appropriate State court
3 against a State regulatory authority, a distribution utility, or a nonregulated distribution
4 utility for failure to comply with this section. Filing an action challenging whether retail
5 competition is being implemented consistent with subsection (b) makes a notice of
6 retail competition ineffective for purposes of section 118 of this Act and sections
7 212(h), 216, and 217 of the Federal Power Act until final resolution of the action.
8 Notwithstanding any other law, a court created under Article III of the Constitution does
9 not have jurisdiction over an action arising under this section."

10 (b) Definition.--Section 3 of PURPA is amended by adding after paragraph (21)
11 the following new paragraph:

12 "(22) The term 'notice of retail competition' means a notice filed under
13 section 609(d).".

14 SEC. 102. AUTHORITY TO IMPOSE RECIPROCITY REQUIREMENTS.

15 PURPA is amended by adding the following new section after section 117:

16 "SEC. 118. AUTHORITY TO IMPOSE RECIPROCITY REQUIREMENTS.

17 "(a) State Regulatory Authority.--If a State regulatory authority files a notice of
18 retail competition with respect to a distribution utility, beginning on the effective date of
19 the notice, the State regulatory authority may prohibit any other distribution utility
20 located in the United States over which it does not have ratemaking authority (and any
21 affiliate of such a utility, as defined under the Public Utility Holding Company Act of
22 1998) from selling electric energy to electric consumers of a distribution facility

1 covered by the notice of retail competition, unless a notice of retail competition has
2 been filed with respect to the other distribution utility.

3 "(b) Nonregulated Distribution Utility.--If a nonregulated distribution utility files a
4 notice of retail competition, beginning on the effective date of the notice, it may prohibit
5 any other distribution utility located in the United States (or affiliate of the utility, as
6 defined under the Public Utility Holding Company Act of 1998) from selling electric
7 energy to electric consumers of the nonregulated distribution utility covered by the
8 notice unless a notice of retail competition has been filed with respect to the other
9 distribution utility.

10 "(c) Definitions.--For purposes of this section, 'distribution utility' and
11 'nonregulated distribution utility' have the meaning given them in section 609(a).".

12 SEC. 103. CONSUMER INFORMATION.

13 PURPA is amended by adding the following new section after section 118 as
14 added by section 102 of this Act:

15 "SEC. 119. CONSUMER INFORMATION DISCLOSURE

16 "(a) Disclosure Rules.--Not later than January 1, 2000, the Secretary, in
17 consultation with the Commission, the Administrator of the Environmental Protection
18 Agency, and the Federal Trade Commission, shall issue rules prescribing the form,
19 content, placement, and timing of the supplier disclosure required under subsections
20 (b) and (c) of this section. The rules shall be prescribed in accordance with section
21 553 of title 5, United States Code (the Administrative Procedure Act).

22 "(b) Disclosure to Electric Consumers.--An electric utility that offers to sell

1 electric energy to an electric consumer shall provide the electric consumer, to the
2 extent practicable and in accordance with rules issued under subsection (a), a
3 statement containing the following information:

4 "(1) the nature of the service being offered, including information about
5 interruptibility or curtailment of service;

6 "(2) the price of the electric energy, including a description of any
7 variable charges;

8 "(3) a description of all other charges associated with the service being
9 offered including, but not limited to, access charges, exit charges, back-up
10 service charges, stranded cost recovery charges, and customer service
11 charges;

12 "(4) information concerning the type of energy resource used to generate
13 the electric energy and the environmental attributes of the generation (including
14 air emissions characteristics); and

15 "(5) any other information the Secretary determines can be provided
16 feasibly and would be useful to consumers in making purchasing decisions.

17 "(c) Disclosure to Wholesale Customers.--In every sale of electric energy for
18 resale, the seller shall provide to the purchaser the information respecting the type of
19 energy resource used to generate the electric energy and the environmental attributes
20 of the generation required by rules established under subsection (a).

21 "(d) Federal Trade Commission Enforcement.--A violation of a rule prescribed
22 under this section shall constitute an unfair or deceptive act or practice in violation of

1 section 5 of the Federal Trade Commission Act (15 U.S.C. 45) and shall be treated as
2 a violation of a rule under section 18 of the Federal Trade Commission Act (15 U.S. C.
3 57a). All functions and powers of the Federal Trade Commission under the Federal
4 Trade Commission Act are available to the Federal Trade Commission to enforce
5 compliance with this section notwithstanding jurisdictional limitations in the Federal
6 Trade Commission Act.

7 "(e) Authority to Obtain Information.--Authority to obtain information under
8 section 11 of the Energy Supply and Environmental Coordination Act of 1974 (15
9 U.S.C. 796) is available to the Secretary to administer this section and to the Federal
10 Trade Commission to enforce this section. In order to carry out its duties under this
11 section, the Federal Trade Commission may use any of its powers under sections 3, 6,
12 9, and 20 of the Federal Trade Commission Act (15 U.S.C. 43, 46, 49, and 57b-2)
13 without regard to the limitations contained in section 20(b) of that Act (15 U.S.C. 57b-
14 2(b)) or any jurisdictional limitations contained in that Act.

15 "(f) Enforcement by States.--(1) When a State determines that the interests of its
16 residents have been or are being threatened or adversely affected because any
17 person is violating or has violated a rule of the Secretary under this section, the State
18 may bring a civil action on behalf of its residents in an appropriate district court of the
19 United States to--

20 "(A) enjoin the violation;

21 "(B) enforce compliance with the rule of the Secretary;

22 "(C) obtain damages, restitution, or other compensation on behalf of its

1 residents; or

2 "(D) obtain other relief the court considers appropriate.

3 "(2) The State shall serve prior written notice of any civil action under this
4 subsection upon the Federal Trade Commission and provide the Federal Trade
5 Commission with a copy of its complaint, except that if it is not feasible for the State to
6 provide this prior notice, the State shall serve the notice immediately upon instituting
7 the action. Upon receiving a notice respecting a civil action, the Federal Trade
8 Commission may--

9 "(A) intervene in the action, and

10 "(B) upon so intervening, be heard on all matters arising in the action and
11 file petition for appeal.

12 "(3) For purposes of bringing any civil action under this subsection, this section
13 does not prevent a State official from exercising the powers conferred by State law to
14 conduct investigations, administer oaths or affirmations, or compel the attendance of
15 witnesses or the production of documentary and other evidence.

16 "(4) While a civil action instituted by or on behalf of the Federal Trade
17 Commission for violation of any rule prescribed under this subsection is pending, a
18 State may not institute a civil action under this section against a defendant named in
19 the complaint in the pending action for a violation alleged in the complaint.

20 "(5) A civil action brought under this subsection may be brought in the district in
21 which the defendant is found, is an inhabitant, or transacts business or wherever
22 venue is proper under section 1391 of title 28, United States Code. Process in such

1 an action may be served in any district in which the defendant is an inhabitant or in
2 which the defendant may be found.

3 “(6) This section does not prohibit a State from proceeding in State court on the
4 basis of an alleged violation of a State civil or criminal statute.”.

5 TITLE II. FACILITATING STATE AND REGIONAL REGULATION

6 SEC. 201. CLARIFICATION OF STATE AND FEDERAL AUTHORITY OVER RETAIL 7 TRANSMISSION SERVICES.

8 (a) Nonpreemption of State Authority to Order Retail Wheeling and to Impose
9 Local Delivery Charges.-- Section 201(b) of the Federal Power Act (referred to in this
10 Act as "the FPA") is amended by adding the following new paragraph after paragraph
11 (2):

12 “(3) This Act does not preempt or otherwise affect any authority under the law of
13 a State or municipality to--

14 “(A) require unbundled transmission and local distribution services for
15 the delivery of electric energy directly to an ultimate consumer, but if unbundled
16 transmission is in interstate commerce, the rates, terms, and conditions of the
17 transmission are subject to the exclusive jurisdiction of the Commission under
18 this part, or

19 “(B) impose a delivery charge on an ultimate consumer’s receipt of
20 electric energy.”.

21 (b) Open Access Transmission Authority; Retail Wheeling in Retail Competition
22 States.

1 (1) Applicability of Open Access Transmission Rules.--Section 206 of the
2 FPA is amended by adding the following new subsection after subsection (d):

3 "(e) Open Access Transmission Services.--(1) Under section 205 and this
4 section, the Commission may require, by rule or order, public utilities and transmitting
5 utilities to provide open access transmission services, subject to section 212(h), and
6 may authorize recovery of stranded costs, as defined by the Commission, arising from
7 any requirement to provide open access transmission services. This section applies to
8 any rule or order issued by the Commission before the date of enactment of the
9 Comprehensive Electricity Competition Act."

10 (2) Authority to Order Retail Wheeling.--Section 212(h) of the FPA is
11 amended--

12 (A) by inserting "(1)" before "No";

13 (B) by striking "(1)", "(2)", "(A)", and "(B)" and inserting in their
14 places "(A)", "(B)", "(i)", and "(ii)" respectively;

15 (C) by striking from redesignated paragraph (1)(B)(ii) "the date of
16 enactment of this subsection" and inserting "October 24, 1992," in its
17 place; and

18 (D) by adding at the end a new paragraph as follows:

19 "(2) Notwithstanding paragraph (1), the Commission may issue an order
20 that requires the transmission of electric energy directly or indirectly to an
21 ultimate consumer if a notice of retail competition under section 609 of the
22 Public Utility Regulatory Policies Act of 1978 has been filed and is in effect with

1 respect to the ultimate consumer or if a distribution utility offers open access to
2 its delivery facilities to the ultimate consumer."

3 (3) Conforming Amendments.--

4 (A) Section 3(23) of the FPA is amended to read as follows:

5 "(23) 'transmitting utility' means any entity that owns, controls, or operates
6 electric power transmission facilities that are used for the sale of electric energy,
7 notwithstanding section 201(f) of this Act."

8 (B) Section 3(24) of the FPA is amended to read as follows:

9 "(24) 'transmission services' means the transmission of electric energy
10 sold or to be sold."

11 (C) Section 211(a) of the FPA is amended by striking "for resale".

12 (D) Section 212(a) of the FPA is amended by striking "wholesale"

13 each time it appears, except the last time.

14 (c) Applicability of Commission Jurisdiction to Transmitting Utilities.--Section
15 206(e) of the FPA as added by subsection (b)(1) of this section is amended by adding
16 the following new paragraphs after paragraph (1):

17 "(2)(A) The Commission has jurisdiction over the rates, terms, and conditions for
18 transmission services provided by a transmitting utility that is not a public utility, subject
19 to section 212(h).

20 "(B) In exercising its authority under this paragraph, the Commission--

21 "(i) shall take into account the different structural and operating
22 characteristics of transmitting utilities, including the multi-tier structure and the

1 not-for-profit operations of cooperatives;

2 "(ii) with respect to any transmitting utility that has outstanding loans
3 made or guaranteed by the Rural Utilities Service, shall take into account the
4 policies of the Department of Agriculture in implementing the Rural
5 Electrification Act of 1936 and shall assure, to the extent practicable, that the
6 utility will be able to meet any loan obligations under that Act; and

7 "(iii) shall not approve rates, terms, or conditions the Commission
8 determines would have the effect of jeopardizing the tax exempt status of
9 nonprofit electric cooperatives under the Internal Revenue Code of 1986.

10 "(C) Notwithstanding any other law, section 205, this section, and part III apply
11 to a transmitting utility that is not a public utility for purposes of this section.

12 "(3) The Commission may suspend or modify for specified periods application
13 of its rules on nondiscriminatory open access to one or more of the following entities:
14 the Tennessee Valley Authority, the Bonneville Power Administration, the
15 Southeastern Power Administration, the Southwestern Power Administration, the
16 Western Area Power Administration, a corporation or association with outstanding
17 debt to the Administrator of the Rural Utility Service relating to electric utility facilities,
18 or a full-requirements wholesale customer of any of these entities, if the Commission
19 finds that the entity will not be able to recover stranded costs.

20 "(4) Any electric utility that owns, directly or indirectly, generation facilities
21 financed in whole or in part with outstanding loans made or guaranteed by the Rural
22 Utilities Service may apply to the Commission to impose a charge for the recovery of

1 stranded costs as defined by the Commission. If the Commission determines that the
2 proposed charge is just, reasonable, and not unduly discriminatory or preferential, the
3 Commission may issue an order providing for the imposition of the charge on
4 transmission service by the applicant or by another transmitting utility or on any electric
5 utility or transaction subject to the Commission's jurisdiction."

6 SEC. 202. INTERSTATE COMPACTS ON REGIONAL TRANSMISSION PLANNING.

7 The FPA is amended by adding after section 214 the following new section:

8 "INTERSTATE COMPACTS ON REGIONAL TRANSMISSION PLANNING

9 "SEC. 215. (a) The consent of Congress is given for an agreement to establish
10 a regional transmission planning agency, if the Commission determines that the
11 agreement would--

12 "(1) facilitate coordination among the States within a particular region
13 with regard to the planning of future transmission, generation, and distribution
14 facilities,

15 "(2) carry out State electric facility siting responsibilities more effectively,

16 "(3) meet the other requirements of this section and rules prescribed by
17 the Commission under this section, and

18 "(4) otherwise be consistent with the public interest.

19 "(b)(1) If the Commission determines that an agreement meets the requirements
20 of subsection (a), the agency established under the agreement has the authority
21 necessary or appropriate to carry out the agreement. This authority includes authority
22 with respect to matters otherwise within the jurisdiction of the Commission, if expressly

1 provided for in the agreement and approved by the Commission.

2 "(2) The Commission's determination under this section may be subject to any
3 terms or conditions the Commission determines are necessary to ensure that the
4 agreement is in the public interest.

5 "(c)(1) The Commission shall prescribe--

6 "(A) criteria for determining whether a regional transmission planning
7 agreement meets subsection (a), and

8 "(B) standards for the administration of a regional transmission planning
9 agency established under the agreement.

10 "(2) The criteria shall provide that, in order to meet subsection (a)--

11 "(A) a regional transmission planning agency must operate within a
12 region that includes all tribal governments and all or part of each State that is a
13 party to the agreement,

14 "(B) a regional transmission planning agency must be composed of one
15 or more members from each State and tribal government that is a party to the
16 agreement,

17 "(C) each participating State and tribal government must vest in the
18 regional transmission planning agency the authority necessary to carry out the
19 agreement and this section, and

20 "(D) the agency must follow workable and fair procedures in making its
21 decisions, in governing itself, and in regulating parties to the agreement with
22 respect to matters covered by the agreement, including a requirement that all

1 decisions of the agency be made by majority vote (or majority of weighted
2 votes) of the members present and voting.

3 "(3) The criteria may include any other requirement for meeting subsection (a)
4 that the Commission determines is necessary to ensure that the regional transmission
5 planning agency's organization, practices, and procedures are sufficient to carry out
6 this section and the rules issued under it.

7 "(d) The Commission, after notice and opportunity for comment, may terminate
8 the approval of an agreement under this section at any time if it determines that the
9 regional transmission planning agency fails to comply with this section or Commission
10 prescriptions under subsection (c) or that the agreement is contrary to the public
11 interest.

12 "(e) Section 313 applies to a rehearing before a regional transmission planning
13 agency and judicial review of any action of a regional transmission planning agency.
14 For this purpose, when section 313 refers to "Commission", substitute "regional
15 transmission planning agency" and when section 313(b) refers to "licensee or public
16 utility", substitute "entity".

17 SEC. 203. BACKUP AUTHORITY TO IMPOSE A CHARGE ON AN ULTIMATE
18 CONSUMER'S RECEIPT OF ELECTRIC ENERGY

19 The FPA is amended by adding the following new section after section 215 as
20 added by section 202 of this Act:

21 "BACKUP AUTHORITY FOR CHARGE ON RECEIPT OF ELECTRIC ENERGY

22 "SEC. 216. (a) If a State regulatory authority that has provided notice of retail

1 competition under section 609 of the Public Utility Regulatory Policies Act of 1978 for a
2 distribution utility determines that the utility should be authorized or required to impose
3 a charge on an ultimate consumer's receipt of electric energy but the State regulatory
4 authority lacks authority to authorize or require imposition of such a charge, the State
5 regulatory authority may apply to the Commission for an order providing for the
6 imposition of the charge. If the Commission determines that the imposition of the
7 charge is just, reasonable, and not unduly discriminatory or preferential; is consistent
8 with the State regulatory authority's policy regarding the imposition of the charge; and
9 is not specifically prohibited by State law, the Commission may issue an order
10 providing for the imposition of the charge.

11 "(b) If a utility that has outstanding loans made or guaranteed by the Rural
12 Utilities Service and that has filed a notice of retail competition under section 609 of
13 the Public Utilities Regulatory Policies Act of 1978 determines that it is appropriate to
14 impose a charge on an ultimate consumer's receipt of electric energy, but lacks the
15 authority to impose such a charge under State law, the utility may apply to the
16 Commission for an order providing for the imposition of a charge. If the Commission
17 determines that the proposed charge is just, reasonable, and not unduly discriminatory
18 or preferential, the Commission may issue an order providing for the imposition of the
19 charge."

20 SEC. 204. AUTHORITY TO ESTABLISH AND REQUIRE INDEPENDENT SYSTEM
21 OPERATION

22 Section 202 of the FPA is amended by adding the following new subsection

1 after subsection (g):

2 “(h) Upon its own motion or upon application or complaint and after notice and
3 an opportunity for a hearing, the Commission may order the establishment of an entity
4 for the purpose of independent operation and control of interconnected transmission
5 facilities, may order a transmitting utility to relinquish control over operation of its
6 transmission facilities to an entity established for the purpose of independent
7 operation and control of interconnected transmission facilities, or may do both, if the
8 Commission finds that--

9 “(1) this action is appropriate to promote competitive electricity markets
10 and efficient, economical, and reliable operation of the interstate transmission
11 grid;

12 “(2) the entity established for the purpose of independent operation and
13 control of interconnected transmission facilities will operate the transmission
14 facilities in a manner that assures that ownership of transmission facilities
15 provides no advantage in competitive electricity markets; and

16 “(3) any transmitting utility ordered to transfer control of its transmission
17 facilities will receive just and reasonable compensation for the use of its
18 facilities.”.

19 TITLE III. PUBLIC BENEFITS

20 SEC. 301. PUBLIC BENEFITS FUND

21 PURPA is amended by adding after section 609, as added by section 101 of this
22 Act, the following new section:

1 "SEC. 610. PUBLIC BENEFITS FUND.

2 "(a) Definitions.--For purposes of this section--

3 "(1) the term 'Board' means the Federal-State Joint Board established
4 under subsection (b)(1);

5 "(2) the term 'eligible public purpose program' means a program that
6 supports one or more of the following--

7 "(A) availability of affordable electricity service to low-income
8 customers,

9 "(B) implementation of energy conservation and energy efficiency
10 measures and energy management practices,

11 "(C) consumer education,

12 "(D) the development and demonstration of an electricity
13 generation technology that the Secretary determines is emerging from
14 research and development, provides environmental benefits, and--

15 "(i) has significant national commercial potential, or

16 "(ii) provides energy security or generation resource
17 diversity benefits, or

18 "(E) rural assistance subsequent to a determination made under
19 subsection (d)(4);

20 "(3) the term 'fiscal agent' means the entity designated under subsection
21 (b)(2)(B);

22 "(4) the term 'Fund' means the Public Benefits Fund established under

1 subsection (b)(2)(A); and

2 "(5) the term 'State' means each of the contiguous States and the District
3 of Columbia.

4 "(b) Federal-State Joint Board.--(1) A Federal-State Joint Board is established
5 whose membership is composed of two officers or employees of the United States
6 Government appointed by the Secretary and five State commissioners appointed by
7 the national organization of State commissions. The Secretary shall designate the
8 Chair of the Board.

9 "(2) The Board shall--

10 "(A) establish a Public Benefits Fund upon petition of States and tribal
11 governments wishing to participate in the program under this section,

12 "(B) appoint a fiscal agent, from persons nominated by the States and
13 tribal governments petitioning to establish the Fund, and

14 "(C) administer the Fund as set forth in this section.

15 "(c) Fiscal Agent.--The fiscal agent appointed by the Board shall collect and
16 disburse the amounts in the Fund as set forth in this section.

17 "(d) Secretary.--The Secretary shall prescribe rules for--

18 "(1) the determination of charges under subsection (e);

19 "(2) the collection of amounts for the Fund, including provisions for
20 overcollection or undercollection;

21 "(3) distribution of amounts from the Fund; and

22 "(4) the criteria under which the Board determines whether a State or

1 tribal government's program is an eligible public purpose program, including a
2 rural assistance program. A rural assistance program shall be an eligible public
3 purpose program to the extent that the Secretary, in consultation with the
4 Secretary of Agriculture, determines by rule that significant adverse economic
5 effects on rural customers have occurred or will occur as a result of electricity
6 restructuring that meets the retail competition requirements of this Act. After
7 such a determination is made, the Secretary, in consultation with the Secretary
8 of Agriculture, shall specify by rule the mechanism for distribution of funds to
9 rural assistance programs, amounts to be provided, and variances to the overall
10 requirements to the Public Benefits Fund under this section, if any. For the
11 purposes of funding rural assistance programs, the Secretary shall increase the
12 charge for the Public Benefit Fund as necessary, up to a maximum of .17 mills
13 per kilowatt hour. Funding for rural assistance programs under this section
14 shall be provided exclusively from this increase in the charge.

15 "(e) Public Benefits Charge.--(1) As a condition of existing or future
16 interconnection with facilities of any transmitting utility, each owner of an electric
17 generating facility whose capacity exceeds one megawatt shall pay the transmitting
18 utility a public benefits charge determined under paragraph (2), even if the generation
19 facility and the transmitting facility are under common ownership or are otherwise
20 affiliated. Each importer of electric energy from Canada or Mexico, as a condition of
21 existing or future interconnection with facilities of any transmitting utility in the United
22 States, shall pay this same charge for imported electric energy. The transmitting utility

1 shall pay the amounts collected to the fiscal agent at the close of each month, and the
2 fiscal agent shall deposit the amounts into the Fund.

3 "(2)(A) The Board shall notify the Commission of the sum of the requests of all
4 States and tribal governments under subsection (f) within 30 days after receiving the
5 requests.

6 "(B) The Commission shall calculate the rate for the public benefits charge for
7 each calendar year at an amount, not in excess of 1 mill per kilowatt-hour, equal to the
8 sum of the requests of all States and tribal governments under subsection (f) for
9 programs described in subsection (a)(2)(A) through (a)(2)(D) divided by the estimated
10 kilowatt hours of electric energy to be generated by generators subject to the charge.
11 Every five years the Secretary shall review the charge and shall direct the Commission
12 to revise the charge as appropriate to maintain a total Fund level relatively close to the
13 target level of approximately \$3 billion per year nationwide, adjusted for inflation. If
14 there are significant receipts from the sale of Renewable Energy Credits under section
15 611, the Secretary shall review the rate for this charge on a more frequent basis and
16 may direct the Commission to reduce the charge by some portion of these receipts as
17 long as sufficient funds remain to ensure that the Fund level is appropriate to achieve
18 the environmental goals of this section and section 611 of this Act.

19 "(C) If a finding is made under subsection (d)(4) in relation to rural customers,
20 the public benefit charge shall be increased as indicated under subsection (d)(4).

21 "(f) State and Tribal Government Participation.--(1) Not later than 90 days before
22 the beginning of each calendar year, each State and tribal government seeking to

1 participate in the Fund shall submit to the Board a request for payments from the Fund
2 for the calendar year in an amount not in excess of 50 percent of the State or tribal
3 government's estimated expenditures for eligible public purpose programs for the
4 year, except as provided under rules issued under subsection (d)(4) for rural
5 assistance programs.

6 "(2) To the extent a State or tribal government generates all or part of its funds
7 for eligible public purpose programs through a wires charge on an ultimate
8 consumer's receipt of electric energy, the State or tribal government shall impose the
9 charge on a non-discriminatory basis on all consumers within the State or tribal
10 government jurisdiction.

11 "(3) Notwithstanding subsection (a)(5)--

12 "(A) Alaska may participate in the Fund as a State if it certifies to the
13 Board that all generators within Alaska with a nameplate capacity exceeding
14 one megawatt shall pay into the Fund at the rate calculated by the Board during
15 the year in which Alaska seeks matching funds, and

16 "(B) Hawaii may participate in the Fund as a State if it certifies to the
17 Board that all generators within Hawaii with a nameplate capacity exceeding
18 one megawatt shall pay into the Fund at the rate calculated by the Board during
19 the year in which Hawaii seeks matching funds.

20 "(g) Disbursal from the Fund.--(1) The Board shall review State and tribal
21 government submissions and determine whether programs designated by the State or
22 tribal government are eligible public purpose programs, using the criteria prescribed

1 under subsection (d), and whether there is reasonable assurance that spending
2 qualifying as State or tribal government matching funds will occur.

3 "(2) The fiscal agent shall disburse amounts in the Fund to participating States
4 and tribal governments to carry out eligible public purpose programs in accordance
5 with this subsection and rules prescribed under subsection (d).

6 "(3) To the extent the aggregate amount of funds requested by the States and
7 tribal governments exceeds the maximum aggregate revenues eligible to be collected
8 under subsection (e) and deposited as payment for Renewable Energy Credits under
9 section 611, the fiscal agent shall reduce each participating State and tribal
10 government's request proportionately.

11 "(4)(A) The fiscal agent shall disburse amounts for a calendar year from the
12 Fund to a State or tribal government in twelve equal monthly payments beginning two
13 months after the beginning of the calendar year. Amounts disbursed may not exceed
14 the lesser of the State or tribal government's request for the fiscal year, after any
15 reduction required under paragraph (3), or 50 percent of the State or tribal
16 government's documented expenditures for eligible public purpose programs for a
17 calendar year, except as provided under rules issued under subsection (d)(4) for rural
18 assistance programs.

19 "(B) The fiscal agent shall make distributions to the State or tribal government or
20 to an entity designated by the State or tribal government to receive payments. The
21 State or tribal government may designate a nonregulated utility as an entity to receive
22 payments under this section.

1 "(C) A State or tribal government may use amounts received only for the eligible
2 public purpose programs the State or tribal government designated in its submission
3 to the Board and the Board determined eligible.

4 “(h) Report.--One year before the date of expiration of this section, the Secretary
5 shall report to Congress, after consultation with the Board, whether a public benefits
6 fund should continue to exist.

7 "(i) Sunset.--This section expires at midnight on December 31 of the fifteenth
8 year after the year the Comprehensive Electricity Competition Act is enacted, except
9 with regard to charges and funding for rural assistance programs."

10 SEC. 302. FEDERAL RENEWABLE PORTFOLIO STANDARD.

11 (a) Standard.--PURPA is amended by adding after section 610, as added by
12 section 301 of this Act, the following new section:

13 "SEC. 611. FEDERAL RENEWABLE PORTFOLIO STANDARD.

14 "(a) Minimum Renewable Generation Requirement.--(1) For each calendar year
15 beginning with 2000, a retail electric supplier shall submit to the Secretary Renewable
16 Energy Credits in an amount equal to the required annual percentage, specified in
17 subsection (b), of the total electric energy sold by the retail electric supplier to electric
18 consumers in the calendar year. The retail electric supplier shall make this
19 submission before April 1 of the following calendar year.

20 "(2) For purposes of this section 'renewable energy' means energy produced by
21 solar, wind, geothermal, or biomass.

22 "(3) This section does not preclude a State from requiring additional renewable

1 energy generation in that State.

2 "(b) Required Annual Percentage.--(1) The Secretary shall determine the
3 required annual percentage that is to be applied to all retail electric suppliers for
4 calendar years 2000--2004. This required annual percentage shall be equal to the
5 percent of the total electric energy sold, during the most recent calendar year for which
6 information is available before the calendar year of the enactment of this section, by
7 retail electric suppliers to electric customers in the United States that is renewable
8 energy.

9 "(2) The Secretary shall determine the required annual percentage for all retail
10 electric suppliers for calendar years 2005-2009. This percentage shall be above the
11 percentage in paragraph (1) and below the percentage in paragraph (3) and shall be
12 selected to promote a smooth transition to the level in paragraph (3).

13 "(3) for calendar years 2010-2015, 5.5 percent.

14 "(c) Submission of Credits.--A retail electric supplier may satisfy the
15 requirements of subsection (a) through the submission of--

16 "(1) Renewable Energy Credits issued under subsection (d) for
17 renewable energy generated by the retail electric supplier in the calendar year
18 for which Credits are being submitted or any previous calendar year,

19 "(2) Renewable Energy Credits issued under subsection (d) to any
20 renewable energy generator for renewable energy generated in the calendar
21 year for which Credits are being submitted or a previous calendar year and
22 acquired by the retail electric supplier, or

1 "(3) any combination of Credits under paragraphs (1) and (2).

2 "(d) Issuance of Credits.--(1) The Secretary shall establish, not later than one
3 year after the date of enactment of this section, a program to issue, monitor the sale or
4 exchange of, and track Renewable Energy Credits.

5 "(2) Under the program, an entity that generates electric energy through the use
6 of renewable energy may apply to the Secretary for the issuance of Renewable
7 Energy Credits. The application shall indicate--

8 "(A) the type of energy used to produce the electricity,

9 "(B) the State in which the electric energy was produced, and

10 "(C) any other information the Secretary determines appropriate.

11 "(3) The Secretary shall issue to an entity one Renewable Energy Credit for
12 each kilowatt-hour of electric energy the entity generates through the use of renewable
13 energy in any State in 2000 and any succeeding year. To be eligible for a Renewable
14 Energy Credit, the unit of electricity generated through the use of renewable energy
15 may be sold or may be used by the generator. If both renewable energy and non-
16 renewable energy are used to generate the electric energy, the Secretary shall issue
17 credits based on the proportion of renewable energy used. The Secretary shall
18 identify Renewable Energy Credits by type of generation and by the State in which the
19 generating facility is located.

20 "(4) In order to receive a Renewable Energy Credit, the recipient of a
21 Renewable Energy Credit shall pay a fee, calculated by the Secretary, in an amount
22 that is equal to the administrative costs of issuing, recording, monitoring the sale or

1 exchange of, and tracking the Credit or does not exceed five percent of the dollar
2 value of the Credit, whichever is lower. The Secretary shall retain the fee and use it to
3 pay these administrative costs.

4 "(5) When a generator sells electric energy generated through the use of
5 renewable energy to a retail electric supplier under a contract subject to section 210 of
6 this Act, the retail electric supplier is treated as the generator of the electric energy for
7 the purposes of this section for the duration of the contract.

8 "(6) The Secretary shall disqualify an otherwise eligible renewable energy
9 generator from receiving a Renewable Energy Credit if the generator has elected to
10 participate in net metering under section 612.

11 "(7) If a generator using renewable energy receives matching funds under
12 section 610, the Secretary shall reduce the number of Renewable Energy Credits the
13 generator receives under paragraph (3) so that the aggregate value of those Credits
14 plus the matching funds received under section 610 equals the aggregate value of the
15 Credits the generator would have received absent this paragraph. For purposes of
16 this paragraph, the Secretary shall value a Credit at a price that is representative of the
17 price of a Credit in private transactions. In no event shall the Secretary use a price to
18 establish values for purposes of this paragraph that exceeds the cost cap established
19 under subsection (f).

20 "(e) Sale or Exchange.--A Renewable Energy Credit may be sold or exchanged
21 by the entity to whom issued or by any other entity who acquires the Credit. A
22 Renewable Energy Credit for any year that is not used to satisfy the minimum

1 renewable generation requirement of subsection (a) for that year may be carried
2 forward for use in another year.

3 "(f) Renewable Energy Credit Cost Cap.--Beginning January 1, 2000, the
4 Secretary shall offer Renewable Energy Credits for sale. The Secretary shall charge
5 1.5 cents for each Renewable Energy Credit sold during calendar year 2000, and on
6 January 1 of each following year, the Secretary shall adjust for inflation, based on the
7 Consumer Price Index, the price charged per Credit for that calendar year. The
8 Secretary shall deposit in the Public Benefits Fund established under section 610 the
9 amount received from a sale under this subsection. That amount shall be used for the
10 same purposes as other amounts in the Public Benefits Fund.

11 "(g) Enforcement.--The Secretary may bring an action in the appropriate United
12 States district court to impose a civil penalty on a retail electric supplier that does not
13 comply with subsection (a). A retail electric supplier who does not submit the required
14 number of Renewable Energy Credits under subsection (a) is subject to a civil penalty
15 of not more than three times the value of the Renewable Energy Credits not submitted.
16 For purposes of this subsection, the value of a Renewable Energy Credit is the price of
17 a Credit determined under subsection (f) for the year the Credits were not submitted.

18 "(h) Information Collection.--The Secretary may collect the information
19 necessary to verify and audit--

20 "(1) the annual electric energy generation and renewable energy
21 generation of any entity applying for Renewable Energy Credits under this
22 section,

1 "(2) the validity of Renewable Energy Credits submitted by a retail electric
2 supplier to the Secretary, and

3 "(3) the quantity of electricity sales of all retail electric suppliers.

4 "(i) Sunset.--This section expires December 31, 2015.".

5 (b) Definition.--Section 3 of PURPA is amended by adding after paragraph (22)
6 as added by section 101 of this Act the following new paragraph:

7 "(23) The term 'retail electric supplier' means a person, State agency, or
8 Federal agency that sells electric energy to an electric consumer.".

9 SEC. 303. NET METERING

10 PURPA is amended by adding the following new section after section 611 as
11 added by section 302 of this Act:

12 "SEC. 612. NET METERING FOR RENEWABLE ENERGY

13 “(a) Definitions.--For purposes of this section--

14 “(1) The term 'eligible on-site generating facility' means a facility on the
15 site of an electric consumer with a peak generating capacity of 20 kilowatts or
16 less that is fueled solely by a renewable energy resource.

17 “(2) The term 'renewable energy resource' means solar energy, wind,
18 geothermal, or biomass.

19 “(3) The term 'net metering service' means service to an electric
20 consumer under which electricity generated by that consumer from an eligible
21 on-site generating facility and delivered to the distribution system through the
22 same meter through which purchased electricity is received may be used to

1 offset electricity provided by the retail electric supplier to the electric consumer
2 during the applicable billing period so that an electric consumer is billed only for
3 the net electricity consumed during the billing period, but in no event shall the
4 net be less than zero during the applicable billing period.

5 “(b) Requirement to Provide Net Metering Service.--Each retail electric supplier
6 shall make available upon request net metering service to any retail electric consumer
7 whom the supplier currently serves or solicits for service.

8 “(c) Requirement to Provide Interconnection.--A distribution utility, as defined in
9 section 609, shall permit the interconnection to its distribution system of an on-site
10 generating facility if the facility meets the safety and power quality standards
11 established by the Commission.

12 “(d) Rules.--The Commission shall prescribe safety and power quality standards
13 and rules necessary to carry out this section. These standards and rules apply to any
14 interconnections of an on-site generating facility with a distribution system, regardless
15 of the size of the facility or the type of fuel used by the facility.

16 “(e) State Authority.--This section does not preclude a State from imposing
17 additional requirements consistent with the requirements in this section. A State may
18 impose a cap limiting the amount of net metering available in the State.”.

19 SEC. 304. REFORM OF SECTION 210 OF PURPA

20 Section 210 of PURPA is amended by adding the following new subsection
21 after subsection (I):

22 “(m) Repeal of Mandatory Purchase Requirement.--After the date of enactment

1 of the Comprehensive Electricity Competition Act, an electric utility shall not be
2 required to enter into a new contract or obligation to purchase electric energy under
3 this section."

4 TITLE IV. REGULATION OF MERGERS AND CORPORATE STRUCTURE

5 SEC. 401. REFORM OF HOLDING COMPANY REGULATION UNDER PUHCA.

6 Effective 18 months after the enactment of this Act, the Public Utility Holding
7 Company Act of 1935 is repealed and the following is enacted in its place.

8 "SECTION 1. SHORT TITLE.

9 "This Act may be cited as the 'Public Utility Holding Company Act of 1998'.

10 "SEC. 2. DEFINITIONS.

11 "For purposes of this Act --

12 "(1) the term 'affiliate' of a company means any company 5 percent or
13 more of the outstanding voting securities of which are owned, controlled, or held
14 with power to vote, directly or indirectly, by such company;

15 "(2) the term 'associate company' of a company means any company in
16 the same holding company system with such company;

17 "(3) the term 'Commission' means the Federal Energy Regulatory
18 Commission;

19 "(4) the term 'company' means a corporation, partnership, association,
20 joint stock company, business trust, or any organized group of persons, whether
21 incorporated or not, or a receiver, trustee, or other liquidating agent of any of the
22 foregoing;

1 "(5) the term 'electric utility company' means any company that owns or
2 operates facilities used for the generation, transmission, or distribution of
3 electric energy for sale;

4 "(6) the terms 'exempt wholesale generator' and 'foreign utility company'
5 have the same meanings as in sections 32 and 33, respectively, of the Public
6 Utility Holding Company Act of 1935, as those sections existed on the day
7 before the effective date of this Act;

8 "(7) the term 'gas utility company' means any company that owns or
9 operates facilities used for distribution at retail (other than the distribution only in
10 enclosed portable containers, or distribution to tenants or employees of the
11 company operating such facilities for their own use and not for resale) of natural
12 or manufactured gas for heat, light, or power;

13 "(8) the term 'holding company' means--

14 "(A) any company that directly or indirectly owns, controls, or
15 holds, with power to vote, 10 percent or more of the outstanding voting
16 securities of a public utility company or of a holding company of any
17 public utility company; and

18 "(B) any person, determined by the Commission, after notice and
19 opportunity for hearing, to exercise directly or indirectly (either alone or
20 pursuant to an arrangement or understanding with one or more persons)
21 such a controlling influence over the management or policies of any
22 public utility company or holding company as to make it necessary or

1 appropriate for the rate protection of utility customers with respect to rates
2 that such person be subject to the obligations, duties, and liabilities
3 imposed by this Act upon holding companies;

4 "(9) the term 'holding company system' means a holding company,
5 together with its subsidiary companies;

6 "(10) the term 'jurisdictional rates' means rates established by the
7 Commission for the transmission of electric energy, the sale of electric energy at
8 wholesale in interstate commerce, the transportation of natural gas, and the
9 sale in interstate commerce of natural gas for resale for ultimate public
10 consumption for domestic, commercial, industrial, or any other use;

11 "(11) the term 'natural gas company' means a person engaged in the
12 transportation of natural gas in interstate commerce or the sale of such gas in
13 interstate commerce for resale;

14 "(12) the term 'person' means an individual or company;

15 "(13) the term 'public utility' means any person who owns or operates
16 facilities used for transmission of electric energy or sales of electric energy at
17 wholesale in interstate commerce;

18 "(14) the term 'public utility company' means an electric utility company or
19 a gas utility company;

20 "(15) the term 'State commission' means any commission, board,
21 agency, or officer, by whatever name designated, of a State, municipality, or
22 other political subdivision of a State that, under the laws of such State, has

1 jurisdiction to regulate public utility companies;

2 "(16) the term 'subsidiary company' of a holding company means--

3 "(A) any company, 10 percent or more of the outstanding voting
4 securities of which are directly or indirectly owned, controlled, or held
5 with power to vote, by such holding company; and

6 "(B) any person, the management or policies of which the
7 Commission, after notice and opportunity for hearing, determines to be
8 subject to a controlling influence, directly or indirectly, by such holding
9 company (either alone or pursuant to an arrangement or understanding
10 with one or more other persons) so as to make it necessary for the rate
11 protection of utility customers with respect to rates that such person be
12 subject to the obligations, duties, and liabilities imposed by this Act upon
13 subsidiary companies of holding companies; and

14 "(17) the term 'voting security' means any security presently entitling the
15 owner or holder thereof to vote in the direction or management of the affairs of a
16 company.

17 "SEC. 3. FEDERAL ACCESS TO BOOKS AND RECORDS

18 "(a) IN GENERAL.--Each holding company and each associate company
19 thereof shall maintain, and shall make available to the Commission, such books,
20 accounts, records, memoranda, and other records as the Commission deems to be
21 relevant to costs incurred by a public utility or natural gas company that is an associate
22 company of such holding company and necessary or appropriate for the protection of

1 utility customers with respect to jurisdictional rates for the transmission of electric
2 energy, the sale of electric energy at wholesale in interstate commerce, the
3 transportation of natural gas in interstate commerce, and the sale in interstate
4 commerce of natural gas for resale for ultimate public consumption for domestic,
5 commercial, industrial, or any other use.

6 "(b) AFFILIATE COMPANIES.--Each affiliate of a holding company or of any
7 subsidiary company of a holding company shall maintain, and make available to the
8 Commission, such books, accounts, memoranda, and other records with respect to
9 any transaction with another affiliate, as the Commission deems relevant to costs
10 incurred by a public utility or natural gas company that is an associate company of
11 such holding company and necessary or appropriate for the protection of utility
12 customers with respect to jurisdictional rates.

13 "(c) HOLDING COMPANY SYSTEMS.--The Commission may examine the
14 books, accounts, memoranda, and other records of any company in a holding
15 company system, or any affiliate thereof, as the Commission deems relevant to costs
16 incurred by a public utility or natural gas company within such holding company
17 system and necessary or appropriate for the protection of utility customers with respect
18 to jurisdictional rates.

19 "(d) CONFIDENTIALITY.--No member, officer, or employee of the Commission
20 shall divulge any fact or information that may come to his or her knowledge during the

1 course of examination of books, accounts, memoranda, or other records as provided in
2 this section, except as may be directed by the Commission or by a court of competent
3 jurisdiction.

4 "SEC. 4. STATE ACCESS TO BOOKS AND RECORDS

5 "(a) IN GENERAL.--Upon the written request of a State commission having
6 jurisdiction to regulate a public utility company in a holding company system, the
7 holding company or any associate company or affiliate thereof, other than such public
8 utility company, wherever located, shall produce for inspection such books, accounts,
9 memoranda, and other records that--

10 "(1) have been identified in reasonable detail in a proceeding before the
11 State commission;

12 "(2) the State commission deems are relevant to costs incurred by such
13 public utility company; and

14 "(3) are necessary for the effective discharge of the responsibilities of the
15 State commission with respect to such proceeding.

16 "(b) LIMITATION.--Subsection (a) does not apply to any person that is a holding
17 company solely by reason of ownership of one or more qualifying facilities under the
18 Public Utility Regulatory Policies Act of 1978.

19 "(c) CONFIDENTIALITY OF INFORMATION.--The production of books, accounts,
20 memoranda, and other records under subsection (a) shall be subject to such terms
21 and conditions as may be necessary and appropriate to safeguard against
22 unwarranted disclosure to the public of any trade secrets or sensitive commercial

1 information.

2 "(d) EFFECT ON STATE LAW.--Nothing in this section shall preempt applicable
3 State law concerning the provision of books, records, or any other information, or in
4 any way limit the rights of any State to obtain books, records, or any other information
5 under any other Federal law, contract, or otherwise.

6 "(e) COURT JURISDICTION.--Any United States district court located in the
7 State in which the State commission referred to in subsection (a) is located shall have
8 jurisdiction to enforce compliance with this section.

9 "SEC. 5. EXEMPTION AUTHORITY

10 "(a) RULEMAKING.--Not later than 90 days after the effective date of this Act, the
11 Commission shall promulgate a final rule to exempt from the requirements of section 3
12 any person that is a holding company, solely with respect to one or more --

13 "(1) qualifying facilities under the Public Utility Regulatory Policies Act of
14 1978;

15 "(2) exempt wholesale generators; or

16 "(3) foreign utility companies.

17 "(b) OTHER AUTHORITY.--If, upon application or upon its own motion, the
18 Commission finds that the books, records, accounts, memoranda, and other records of
19 any person are not relevant to the jurisdictional rates of a public utility or natural gas
20 company, or if the Commission finds that any class of transactions is not relevant to the
21 jurisdictional rates of a public utility or natural gas company, the Commission shall
22 exempt such person or transaction from the requirements of section 3.

1 "SEC. 6. AFFILIATE TRANSACTIONS.

2 "Nothing in this Act shall preclude the Commission or a State commission from
3 exercising its jurisdiction under otherwise applicable law to determine whether a
4 public utility company, public utility, or natural gas company may recover in rates any
5 costs of an activity performed by an associate company, or any costs of goods or
6 services acquired by such public utility company from an associate company.

1 "SEC. 7. APPLICABILITY.

2 "No provision of this Act shall apply to, or be deemed to include--

3 "(1) the United States;

4 "(2) a State or any political subdivision of a State;

5 "(3) any foreign governmental authority not operating in the United
6 States;

7 "(4) any agency, authority, or instrumentality of any entity referred to in
8 paragraph (1), (2), or (3); or

9 "(5) any officer, agent, or employee of any entity referred to in paragraph
10 (1), (2), or (3) acting as such in the course of official duty.

11 "SEC 8. EFFECT ON OTHER REGULATIONS.

12 "Nothing in this Act precludes the Commission or a State commission from
13 exercising its jurisdiction under otherwise applicable law to protect utility customers.

14 "SEC. 9. ENFORCEMENT.

15 "The Commission shall have the same powers as set forth in sections 306
16 through 317 of the Federal Power Act (16 U.S.C. 825d-825p) to enforce the provisions
17 of this Act.

18 "SEC. 10. SAVINGS PROVISIONS.

19 "(a) IN GENERAL.--Nothing in this Act prohibits a person from engaging in or
20 continuing to engage in activities or transactions in which it is legally engaged or
21 authorized to engage on the effective date of this Act.

22 "(b) EFFECT ON OTHER COMMISSION AUTHORITY.--Nothing in this Act limits

1 the authority of the Commission under the Federal Power Act (16 U.S.C. 791a et seq.)
2 (including section 301 of that Act) or the Natural Gas Act (15 U.S.C. 717 et seq.)
3 (including section 8 of that Act).

4 "SEC. 11. IMPLEMENTATION.

5 "Not later than 18 months after the date of enactment of the Comprehensive
6 Electricity Competition Act, the Commission shall--

7 "(1) promulgate such regulations as may be necessary or appropriate to
8 implement this Act (other than section 4); and

9 "(2) submit to the Congress detailed recommendations on technical and
10 conforming amendments to Federal law necessary to carry out this Act and the
11 amendments made by this Act.

12 "SEC. 12. TRANSFER OF RESOURCES.

13 "All books and records that relate primarily to the functions transferred to the
14 Commission under this Act shall be transferred from the Securities and Exchange
15 Commission to the Commission.

16 "SEC. 13. AUTHORIZATION OF APPROPRIATIONS.

17 "There are authorized to be appropriated such funds as may be necessary to
18 carry out this Act.

19 "SEC. 14. CONFORMING AMENDMENT TO THE FEDERAL POWER ACT.

20 "Section 318 of the Federal Power Act (16 U.S.C. 825q) is repealed."

1 SEC. 402. ELECTRIC COMPANY MERGERS.

2 Section 203(a) of the FPA is amended by--

3 (1) striking "public utility" each time it appears and inserting in its place
4 "person or electric utility company";

5 (2) inserting after the first sentence the following: "Except as the
6 Commission otherwise provides, a holding company in a holding company
7 system that includes an electric utility company shall not, directly or indirectly,
8 purchase, acquire, or take any security of an electric utility company or of a
9 holding company in a holding company system that includes an electric utility
10 company, without first securing an order of the Commission authorizing it to do
11 so.";

12 (3) striking "hearing" in the last sentence and inserting "oral or written
13 presentation of views"; and

14 (4) adding at the end the following: "For purposes of this subsection, the
15 terms 'electric utility company', 'holding company', and 'holding company
16 system' have the meaning given them in section 2 of the Public Utility Holding
17 Company Act of 1998. Notwithstanding section 201(b)(1), generation facilities
18 are subject to the jurisdiction of the Commission for purposes of this section,
19 except as the Commission otherwise may provide.".

20 SEC. 403. REMEDIAL MEASURES FOR MARKET POWER.

21 The FPA is amended by adding the following new section after section 216 as
22 added by section 203 of this Act:

1 "REMEDIAL MEASURES FOR MARKET POWER"

2 "SEC. 217. (a) Definitions.--As used in this section--

3 "(1) 'market power' means the ability of an electric utility profitably to
4 maintain prices above competitive levels for a significant period of time, and

5 "(2) 'notice of retail competition' has the meaning provided under section
6 3(22) of the Public Utility Regulatory Policies Act of 1978.

7 "(b) Commission Jurisdictional Sales.--(1) If the Commission determines that
8 there are markets in which a public utility that owns or controls generation facilities has
9 market power in sales of electric energy for resale in interstate commerce, the
10 Commission shall order that utility to submit a plan for taking necessary actions to
11 remedy its market power, which may include, but is not limited to, conditions
12 respecting operation or dispatch of generation, independent operation of transmission
13 facilities, or divestiture of ownership of one or more generation facilities.

14 "(2) In consultation with the Attorney General and the Federal Trade
15 Commission, the Commission shall review the plan to determine if its implementation
16 would adequately mitigate the adverse competitive effects of market power. The
17 Commission may approve the plan with or without modification. The plan takes effect
18 upon approval by the Commission. Notwithstanding any State law, regulation, or
19 order to the contrary and notwithstanding any other provision of this Act or any other
20 law, the Commission has jurisdiction to order divestiture or other transfer of control of
21 generation assets pursuant to the plan.

22 "(c) State Jurisdictional Sales.--(1) If a State commission that has filed a notice

1 of retail competition has reason to believe that an electric utility doing business in the
2 State has market power, the State commission may apply for an order under this
3 section.

4 "(2) If, after receipt of such an application and after notice and opportunity for a
5 hearing, the Commission determines that the electric utility has market power in the
6 sales of electric energy sold at retail in the State, this market power would adversely
7 affect competition in the State, and the State commission lacks authority to effectively
8 remedy such market power, the Commission may order the electric utility to submit a
9 plan for taking necessary actions to remedy the electric utility's market power. These
10 actions may include conditions respecting operation or dispatch of generation,
11 competitive procurement of all generation capacity or energy, independent operation
12 of transmission facilities, or divestiture of ownership of one or more generation
13 facilities of the electric utility.

14 "(3) After consultation with the Attorney General and the Federal Trade
15 Commission, the Commission may approve the plan with or without modification. The
16 plan shall take effect upon approval by the Commission.

17 "(4) Notwithstanding any State law, regulation, or order to the contrary and
18 notwithstanding any other provision of this Act or any other law, the Commission has
19 jurisdiction to order divestiture or other transfer of control of generation assets
20 pursuant to the plan."

21 TITLE V--ELECTRIC RELIABILITY

22 SEC. 501. ELECTRIC RELIABILITY ORGANIZATION AND OVERSIGHT

1 (a) The FPA is amended by adding the following new section after section 217
2 as added by section 403 of this Act:

3 "ELECTRIC RELIABILITY ORGANIZATION AND OVERSIGHT

4 "Sec. 218. (a) Definition.--As used in this section:

5 "(1) The term 'bulk-power system' means all facilities and control systems
6 necessary for operating the interconnected transmission grids, including high-
7 voltage transmission lines; substations; control centers; communications, data,
8 and operations planning facilities; and generating units necessary to maintain
9 transmission system reliability.

10 "(2) The term 'electric reliability organization' or 'organization' means the
11 organization registered by the Commission under subsection (d)(4).

12 "(3) The term 'system operator' means any entity that operates or is
13 responsible for the operation of the bulk-power system, including control area
14 operators, independent system operators, transmission companies,
15 transmission system operators, and regional security coordinators.

16 "(4) The term 'user of the bulk-power system' means any entity that sells,
17 purchases, or transmits electric power over the bulk-power system; owns,
18 operates or maintains facilities of the bulk-power system; or is a system
19 operator.

20 "(b) Commission Authority.--(1) The Commission has jurisdiction over the
21 electric reliability organization, all system operators, and all users of the bulk-power
22 system for purposes of approving and enforcing compliance with standards in the

1 United States.

2 "(2) The Commission may register an electric reliability organization and
3 approve and oversee the activities in the United States of that electric reliability
4 organization.

5 "(c) Compliance with Existing Reliability Standards.--A user of the bulk-power
6 system shall comply with standards established by the North American Electric
7 Reliability Council and the regional reliability councils that exist on the date of
8 enactment of the Comprehensive Electricity Competition Act, consistent with any
9 agreement entered into under subsection (f). Each standard remains in effect unless
10 modified under this subsection or superseded by standards approved under
11 subsection (e). The Commission, upon its own motion or upon request and consistent
12 with any agreements entered into pursuant to subsection (f), may modify or suspend
13 the application of a standard and may enforce a standard exercising the same
14 authority that the electric reliability organization may exercise under subsection (k).
15 The North American Electric Reliability Council and the regional reliability councils
16 may monitor compliance with these standards.

17 "(d) Organization Registration and Establishment of Standards.--(1) Not later
18 than 90 days after the date of enactment of this section, the Commission shall issue
19 proposed rules specifying the procedures and requirements for an organization to
20 apply for registration and file existing reliability standards. The Commission shall
21 provide adequate opportunity for comment on the proposed rules. The Commission
22 shall issue final rules under this subsection within 180 days after the date of enactment

1 of this section.

2 "(2) Following the issuance of final Commission rules under paragraph (1), an
3 electric reliability organization may apply for registration with the Commission. The
4 organization shall include in its application its governance, procedures, and funding
5 mechanism, and shall file the standards in effect under subsection (c).

6 "(3) The Commission shall provide public notice of the application and the
7 standards filed under this subsection and afford interested parties an opportunity to
8 comment on the application and filing.

9 "(4) The Commission shall register the organization if the Commission
10 determines that the organization --

11 "(A) has the ability to provide for an adequate level of reliability of the
12 bulk-power system;

13 "(B) permits voluntary membership to any users of the bulk-power system
14 or interested customer class or public interest group;

15 "(C) assures fair representation of its members in the selection of its
16 directors and fair management of its affairs, taking into account the need for
17 efficiency and effectiveness in decisionmaking and operations and the
18 requirements for technical competency in the development of standards and the
19 exercise of oversight of the reliability system, and assures that no single class of
20 market participants has the ability to control the organization's discharge of its
21 responsibilities;

22 "(D) assesses reasonable dues, fees, or other charges necessary to

1 support the organization and the purposes of this section and has a funding
2 mechanism that is fair and not unduly discriminatory;

3 "(E) establishes procedures for standards development that provide
4 reasonable notice and opportunity for public comment, taking into account the
5 need for efficiency and effectiveness in decisionmaking and operations and the
6 requirements for technical competency in the development of standards;

7 "(F) establishes fair and impartial procedures for enforcement of
8 standards, including penalties; limitation of activity, function, or operations; or
9 other appropriate sanctions;

10 "(G) establishes procedures for notice and opportunity for public
11 observation of all meetings, except that the procedures for public observation
12 may include alternative procedures for emergencies or for the discussion of
13 information the directors determine should take place in closed session,
14 including the discussion of information with respect to proposed enforcement or
15 disciplinary action; and

16 "(H) addresses other matters that the Commission considers necessary
17 or appropriate.

18 "(5) The Commission shall approve only one electric reliability organization. If
19 the Commission receives timely applications from two or more applicants that satisfy
20 the requirements of this subsection, the Commission shall approve only the
21 application it concludes will best ensure a reliable bulk-power system.

22 "(e) Review and Changes or Modifications to Standards.--(1) The Commission

1 shall review the standards submitted under subsection (d)(2), concurrent with its
2 review of the application under subsection (d), and each standard remains effective if
3 the Commission determines that it is just, reasonable, and not unduly discriminatory or
4 preferential; is in the public interest; and provides for an adequate level of reliability of
5 the bulk-power system.

6 “(2) With respect to a standard that the Commission determines should not
7 remain effective under paragraph (1), the Commission shall refer that standard to the
8 electric reliability organization for development of a new or modified standard under
9 the organization’s procedures as approved by the Commission.

10 “(3)(A) The electric reliability organization shall file with the Commission any
11 new standard developed under paragraph (2) or a new standard or modification of a
12 standard effective under paragraph (1) for review and approval. A new standard or
13 modification does not take effect unless the Commission determines, after notice and
14 opportunity for comment, that the standard or modification is just, reasonable, and not
15 unduly discriminatory or preferential; is in the public interest; and provides for an
16 adequate level of reliability of the bulk-power system, taking into account the purposes
17 of this section to assure reliability of the bulk-power system and giving due weight to
18 the technical competency of the registered electric reliability organization, and is
19 consistent with any agreement entered into pursuant to subsection (f).

20 “(B) Any standard or modification that does not become effective under this
21 paragraph shall be referred to the electric reliability organization for development of a
22 new or modified standard under the organization’s procedures as approved by the

1 Commission.

2 "(C) The Commission, on its own motion, may require that the electric reliability
3 organization develop a new or revised standard if the Commission considers a new or
4 revised standard necessary or appropriate to further the purposes of this section. The
5 organization shall file the new or revised standard in accordance with this paragraph.

6 "(D) On its own motion or at the request of the electric reliability organization,
7 the Commission may develop and, consistent with any agreement under subsection
8 (f), require immediate implementation by the organization of a new or modified
9 standard if it determines that immediate implementation is required to avoid a
10 significant disruption of reliability that would affect public safety or welfare. If
11 immediate implementation is required, the Commission shall not delay implementation
12 for notice and comment but shall publish the standard for notice and comment in a
13 timely manner.

14 "(4) A user of the bulk power system shall comply with any new or modified
15 standard that takes effect under paragraph (1) or (3).

16 "(f) Coordination with Canada and Mexico.--The United States may enter into
17 international agreements with the governments of Canada and Mexico to provide for
18 effective compliance with standards and to provide for the effectiveness of the electric
19 reliability organization in carrying out its mission and responsibilities.

20 "(g) Changes in Organization Procedures, Governance, or Funding.--(1) The
21 electric reliability organization shall file with the Commission any proposed change in
22 its procedures, governance, or funding and accompany the filing with an explanation

1 of the basis and purpose for the change.

2 “(2)(A) A proposed procedural change may take effect 90 days after filing with
3 the Commission if the change --

4 “(i) constitutes a statement of policy, practice, or interpretation with
5 respect to the meaning, administration, or enforcement of an existing procedure;

6 or

7 “(ii) is concerned solely with administration of the organization.

8 A proposed procedural change that does not qualify under clause (i) or (ii) takes effect
9 only upon a finding by the Commission that the change is just, reasonable, not
10 preferential, and in the public interest.

11 “(B) The Commission, by order, either upon complaint or upon its own motion,
12 may suspend an existing procedure or procedural change if its determines the
13 procedure or the proposed change is unjust, unreasonable, unduly discriminatory or
14 preferential, or is otherwise not in the public interest.

15 “(3) A change in the organization’s governance or funding does not take effect
16 unless the Commission finds that the change is consistent with any agreement under
17 subsection (f) and is just, reasonable, not unduly discriminatory or preferential, and in
18 the public interest.

19 “(4) The Commission may require that the electric reliability organization amend
20 its procedures, governance, or funding if the Commission considers the amendment
21 necessary or appropriate to ensure the fair administration of the organization, conform
22 the organization to the requirements of this section, or further the purposes of this

1 section, consistent with any agreement entered into under subsection (f). The
2 organization shall file the amendment in accordance with paragraph (1).

3 “(h) Organization Delegations of Authority.--(1) The organization may enter into
4 an agreement under which it may delegate some or all of its authority to any person.

5 “(2) The organization shall file with the Commission any agreement entered into
6 under this subsection and any information the Commission requires with respect to the
7 person to whom authority is to be delegated. The Commission may approve the
8 agreement, following public notice and an opportunity for comment, if it finds that the
9 agreement is consistent with the requirements of this section. The agreement shall not
10 take effect without Commission approval.

11 “(3) (A) The Commission may direct a modification to or suspend an agreement
12 entered into under this subsection if it determines that--

13 “(i) the person to whom authority is delegated no longer has the capacity
14 to carry out effectively or efficiently the person's implementation responsibilities
15 under that agreement, or

16 “(ii) the rules, practices, or procedures of the person to whom authority is
17 delegated no longer provide for fair and impartial discharge of the person's
18 implementation responsibilities under the agreement.

19 “(B) If the agreement is suspended, the electric reliability organization shall
20 assume the previously delegated responsibilities .

21 “(i) Organization Membership.--Every system operator shall be a member of the
22 electric reliability organization. The organization rules shall provide for voluntary

1 membership to other users of the bulk-power system and any interested customer
2 class or public interest group. A person required to become a member of the
3 organization who fails to do so is subject to sections 314 and 316A of this Act upon
4 notification from the organization to the Commission.

5 "(j) Failure to Apply for Registration.--(1) If an organization fails to apply for
6 registration with the Commission within six months after the issuance date of final
7 Commission rules for such a filing, or the Commission does not register an agreement
8 within twelve months after the issuance date of final Commission rules for such a filing,
9 the Commission shall convene a process to register an electric reliability organization.

10 "(2) Until an electric reliability organization is registered, the Commission has
11 the same authority to enforce existing or modified standards that the electric reliability
12 organization has under subsection (k).

13 "(k) Disciplinary Action and Penalties.--(1) Consistent with the range of actions
14 approved by the Commission under subsection (d)(4)(F), the electric reliability
15 organization may impose a penalty, take injunctive action, or impose other disciplinary
16 action the organization finds appropriate against a user of the bulk-power system
17 located in the United States if the organization finds, after notice and opportunity for a
18 hearing, that the user has violated an organization procedure or standard.

19 "(2) An action taken under subparagraph (1) takes effect 30 days after the
20 finding unless the Commission, on its own motion or upon application by the user of
21 the bulk-power system who was the subject of the action, suspends the action. The
22 action shall remain in effect or remain suspended until the Commission, after notice

1 and opportunity for comment, sets aside, modifies, or reinstates the action.

2 "(3) The Commission, on its own motion, may impose a penalty, issue an
3 injunction, or impose other disciplinary action the Commission finds appropriate
4 against a user of the bulk power system located in the United States if the Commission
5 finds, after notice and opportunity for a hearing, that the user has violated a procedure
6 or standard of the electric reliability organization.

7 "(I) Adequacy, Reliability, and Reports.--The electric reliability organization shall
8 conduct periodic assessments of the reliability and adequacy of the interconnected
9 bulk-power system in North America and shall report annually to the Commission its
10 findings and recommendations for monitoring or improving system reliability or
11 adequacy."

12 (b) Sections 316 and 316A of the FPA are amended by striking "or 214" each
13 place it appears and inserting "214, or 218".

14 SEC. 502. STATUTORY PRESUMPTION.

15 (a) Federal Power Act.--Any reliability standard developed by the reliability
16 organization, and any actions taken in good faith to comply with a reliability standard
17 under section 218 of the FPA, are rebuttably presumed just and reasonable and not
18 unduly discriminatory or preferential for purposes of that Act.

19 (b) Antitrust Laws.--Notwithstanding section 703 of this Act, the following
20 activities are rebuttably presumed to be in compliance with the antitrust laws of the
21 United States:

22 (1) activities undertaken by the electric reliability organization under

1 section 218 of the FPA or delegated person operating under an agreement in
2 effect under section 218(h) of the FPA, and

3 (2) activities of a member of the electric reliability organization in pursuit
4 of organization objectives under section 218 of the FPA undertaken in good
5 faith under the rules of the organization.

6 TITLE VI -- ENVIRONMENTAL PROTECTION

7 SEC. 601. NITROGEN OXIDES CAP AND TRADE PROGRAM.

8 (a) Purpose.--The purpose of this section is to facilitate the implementation of a
9 regional strategy for reducing ambient concentrations of ozone through regional
10 reductions in emissions of NO_x.

11 (b) Definitions.--For purposes of this section--

12 (1) the term "Administrator" means the Administrator of the Environmental
13 Protection Agency,

14 (2) the term "NO_x" means oxides of nitrogen,

15 (3) the term "NO_x allowance" means an authorization to emit a specified
16 amount of NO_x into the atmosphere, and

17 (4) the term "NO_x allowance cap and trade program" means a program
18 under which, in accordance with regulations issued by the Administrator, the
19 Administrator establishes the maximum number of NO_x allowances that may be
20 allocated for specified control periods, allocates or authorizes a State to
21 allocate NO_x allowances, allows the transfer of NO_x allowances for use in
22 States subject to such a program, requires monitoring and reporting of NO_x

1 emissions that meet the requirements of section 412 of the Clean Air Act, and
2 prohibits, and requires penalties and offsets for, any emissions of NOx in excess
3 of the number of NOx allowances held.

4 (c) Program Implementation.--(1) If the Administrator determines under section
5 110(a)(2)(D) of the Clean Air Act that any source or other type of emissions activity in a
6 State emits NOx in amounts that will contribute significantly to nonattainment in, or
7 interfere with maintenance by, any other State with respect to any national ambient air
8 quality standard for ozone, the Administrator shall establish by regulation, within 12
9 months of the determination for primary standards and as expeditiously as practicable
10 for secondary standards, and shall administer a NOx allowance cap and trade
11 program in all States in which such a source or other type of emissions activity is
12 located.

13 (2) Any NOx allowance cap and trade program shall contribute to providing for
14 emissions reductions that mitigate adequately the contribution or interference and
15 shall be taken into account by the Administrator in determining compliance with
16 section 110(a)(2)(D) of the Clean Air Act.

17 (3) For purposes of sections 113, 114, 304, and 307 of the Clean Air Act,
18 regulations promulgated under this section shall be treated as regulations
19 promulgated under title IV of the Clean Air Act (entitled Acid Deposition Control). A
20 requirement of regulations promulgated under this section is considered an "emission
21 standard" or "emission limitation" within the meaning of section 302 of the Clean Air
22 Act and an "emission standard or limitation under this Act" within the meaning of

1 section 304 of the Clean Air Act.

2 TITLE VII -- OTHER REGULATORY PROVISIONS

3 Sec. 701. TREATMENT OF NUCLEAR DECOMMISSIONING COSTS IN
4 BANKRUPTCY.

5 Section 523 of title 11, United States Code (section 523 of the Bankruptcy Code
6 of 1978), is amended by adding the following new subsection after subsection (e):

7 "(f) Obligations to comply with, and claims resulting from compliance with,
8 Nuclear Regulatory Commission regulations or orders governing the decontamination
9 and decommissioning of nuclear power reactors licensed under section 103 or 104 b.
10 of the Atomic Energy Act of 1954 (42 U.S.C. 2133 and 2134(b)) shall be given priority
11 and shall not be rejected, avoided, or discharged under title 11 of the United States
12 Code or in any liquidation, reorganization, receivership, or other insolvency
13 proceeding under State or Federal law."

14 SEC. 702. STUDY OF IMPACTS OF COMPETITION IN ELECTRICITY MARKETS BY
15 THE ENERGY INFORMATION ADMINISTRATION.

16 Section 205 of the Department of Energy Organization Act (42 U.S.C. 7135) is
17 amended by adding after subsection (l) the following new subsection:

18 "(m)(1) The Administrator shall collect and publish information regarding the
19 impact of wholesale and retail competition on the electric power industry. The
20 Administrator shall prescribe forms for collecting this information. Information to be
21 collected may include, but is not limited to --

22 "(A) the ownership and control of electric generation, transmission,

1 distribution, and related facilities;

2 "(B) electricity consumption and demand;

3 "(C) the transmission, distribution, and delivery of electric services;

4 "(D) the price of competitive electric services;

5 "(E) the costs, revenues, and rates of regulated electric services;

6 "(F) the reliability of the electric generation and transmission system,
7 including the availability of adequate generation and transmission capacity to
8 meet load requirements, generation and transmission capacity additions and
9 retirements, and fuel suppliers and stocks for electric generation;

10 "(G) electric energy efficiency programs and services and their impacts
11 on energy consumption;

12 "(H) the development and use of renewable electric energy resources;
13 and

14 "(I) research, development and demonstration activities to improve the
15 nation's electric system.

16 "(2) In carrying out the purposes of this subsection, the Administrator shall take
17 into account reporting burdens and the protection of proprietary information as
18 required by law."

19 SEC. 703. ANTITRUST SAVINGS CLAUSE.

20 This Act and the amendments made by this Act shall not be construed to modify,
21 impair, or supersede the operation of the antitrust laws. For purposes of this section,
22 "antitrust laws" has the meaning given it in subsection (a) of the first section of the

1 Clayton Act (15 U.S.C. 12(a)), except that it includes section 5 of the Federal Trade
2 Commission Act (15 U.S.C. 45), to the extent that section 5 applies to unfair methods
3 of competition.

4 SEC. 704. ELIMINATION OF ANTITRUST REVIEW BY THE NUCLEAR REGULATORY
5 COMMISSION.

6 Section 105 of the Atomic Energy Act of 1954 (42 U.S.C. 2135) is amended by
7 adding the following after subsection c.:

8 “d. Subsection 105 c. does not apply to an application for a license to construct
9 or operate a utilization or production facility under sections 103 or 104 b. following the
10 date of enactment of this subsection. This Act does not affect the Commission’s
11 authority to enforce antitrust conditions included in licenses issued under sections 103
12 or 104 b. before the date of enactment of this subsection.

13 SEC. 705. ENVIRONMENTAL LAWS SAVINGS CLAUSE.

14 Nothing in this Act alters or affects environmental requirements imposed by
15 Federal or State law, including, but not limited to, the Clean Air Act (42 U.S.C. 7401 et
16 seq.); the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.); the
17 Comprehensive Environmental Response, Compensation, and Liability Act of 1980
18 (42 U.S.C. 9601 et seq.); the Federal Power Act (16 U.S.C. 791a et seq.); and the
19 Endangered Species Act (16 U.S.C. 1531 et seq.).